

E-Filed 5/24/10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

REGINALD RAY YORK,
Plaintiff,
v.
J. HERNANDEZ, et al.,
Defendants.

No. C 09-6080 RS (PR)

ORDER OF SERVICE;

**DIRECTING DEFENDANTS TO FILE
DISPOSITIVE MOTION OR NOTICE
REGARDING SUCH MOTION;**

INSTRUCTIONS TO CLERK

This is a federal civil rights action filed pursuant to 28 U.S.C. § 1983 by plaintiff, a state prisoner proceeding *pro se*, against officials and employees of Soledad State Prison and the California Department of Corrections. The Court now reviews the complaint pursuant to 28 U.S.C. § 1915A(a).

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of it, if the complaint “is frivolous, malicious, or fails to state a claim upon which

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1 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
2 relief.” *Id.* § 1915A(b). Pro se pleadings must nonetheless be liberally construed. *Balistreri*
3 *v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that
5 a right secured by the Constitution or laws of the United States was violated, and (2) that the
6 alleged violation was committed by a person acting under the color of state law. *West v.*
7 *Atkins*, 487 U.S. 42, 48 (1988).

8 **B. Background**

9 Plaintiff alleges that defendant J. Hernandez, a correctional officer at Soledad, used
10 excessive force against plaintiff when he sprayed plaintiff with MK9-OC during an argument
11 about a CD player, and, with other correctional officers, restrained plaintiff and placed him in
12 administrative segregation. Plaintiff also alleges that he suffered permanent damage to his
13 eyes, and received an eighteen-month term in the secured housing unit.

14 **C. Legal Claims**

15 Plaintiff alleges that (1) defendant Hernandez violated his Eighth and Fourteenth
16 Amendment rights when he used excessive force against plaintiff, and filed false statements
17 to cover up his conduct toward plaintiff; (2) defendant N. Grannis violated his due process
18 and free speech rights when she denied his prison grievance as untimely; and (3) in an
19 unrelated incident, defendant Debbie Wikoff, plaintiff’s work supervisor, retaliated against
20 plaintiff for various reasons in violation of his First Amendment rights. Liberally construed,
21 claims (1) and (2) are cognizable under § 1983.

22 Plaintiff’s third claim is DISMISSED without prejudice because it is not related to the
23 two other claims. A plaintiff may properly join as many claims as he has against an
24 opposing party. Fed. R. Civ. P. 18(a). Nevertheless, while multiple claims against a single
25 party may be alleged in a single complaint, unrelated claims against different defendants
26 must be alleged in separate complaints. *See George v. Smith*, 507 F.3d 605, 607 (7th Cir.
27 2007) (finding, under Rule 18(a), prisoner improperly brought complaint raising fifty distinct
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claims against twenty-four defendants). Further, parties may be joined as defendants only if “there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.” Fed. R. Civ. P. 20(a). As a practical matter, this means that claims involving different parties cannot be joined together in one complaint if the facts giving rise to the claims were not factually related in some way — that is, if there was not “similarity in the factual background of a claim.” *Coughlin v. Rogers*, 130 F.3d 1348, 1350 (9th Cir. 1997). General allegations are not sufficient to constitute similarity when the specifics are different. *Id.* The court, on its own initiative, may dismiss misjoined parties from an action, and any claim against a misjoined party may be severed and proceeded with separately. Fed. R. Civ. P. 21. Plaintiff’s claims against defendant Wikoff are DISMISSED without prejudice on grounds that such claims are entirely unrelated to the other two claims. If plaintiff seeks relief for the claims against Wikoff, he must file a separate action.

CONCLUSION

For the foregoing reasons, the Court orders as follows:

1. The Clerk of the Court shall issue summons and the United States Marshal shall serve, without prepayment of fees, a copy of the complaint in this matter, all attachments thereto, and a copy of this order upon J. Hernandez at Soledad State Prison, and upon N. Grannis, Chief of Inmate Appeals, at the California Department of Corrections in Sacramento, CA. The Clerk shall also mail courtesy copies of the complaint and this order to the California Attorney General’s Office.

3. No later than ninety (90) days from the date of this order, defendants shall file a motion for summary judgment or other dispositive motion with respect to the claims in the amended complaint found to be cognizable above.

a. If defendants elect to file a motion to dismiss on the grounds plaintiff failed to exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a),

1 defendants shall do so in an unenumerated Rule 12(b) motion pursuant to *Wyatt v. Terhune*,
2 315 F.3d 1108, 1119–20 (9th Cir. 2003), cert. denied *Alameida v. Terhune*, 540 U.S. 810
3 (2003).

4 b. Any motion for summary judgment shall be supported by adequate
5 factual documentation and shall conform in all respects to Rule 56 of the Federal Rules of
6 Civil Procedure. Defendants are advised that summary judgment cannot be granted, nor
7 qualified immunity found, if material facts are in dispute. If any defendant is of the opinion
8 that this case cannot be resolved by summary judgment, he shall so inform the Court prior to
9 the date the summary judgment motion is due.

10 4. Plaintiff's opposition to the dispositive motion shall be filed with the Court and
11 served on defendants no later than forty-five (45) days from the date defendants' motion is
12 filed.

13 a. In the event the defendants file an unenumerated motion to dismiss
14 under Rule 12(b), plaintiff is hereby cautioned as follows:

15 The defendants have made a motion to dismiss pursuant to Rule 12(b) of the
16 Federal Rules of Civil Procedure, on the ground you have not exhausted your administrative
17 remedies. The motion will, if granted, result in the dismissal of your case. When a party you
18 are suing makes a motion to dismiss for failure to exhaust, and that motion is properly
19 supported by declarations (or other sworn testimony) and/or documents, you may not simply
20 rely on what your complaint says. Instead, you must set out specific facts in declarations,
21 depositions, answers to interrogatories, or documents, that contradict the facts shown in the
22 defendant's declarations and documents and show that you have in fact exhausted your
23 claims. If you do not submit your own evidence in opposition, the motion to dismiss, if
24 appropriate, may be granted and the case dismissed.

25 b. In the event defendants file a motion for summary judgment,
26 the Ninth Circuit has held that the following notice should be given to plaintiffs:

27 The defendants have made a motion for summary judgment by which they
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1 seek to have your case dismissed. A motion for summary judgment under Rule 56 of the
2 Federal Rules of Civil Procedure will, if granted, end your case.

3 Rule 56 tells you what you must do in order to oppose a motion for summary
4 judgment. Generally, summary judgment must be granted when there is no genuine issue of
5 material fact — that is, if there is no real dispute about any fact that would affect the result
6 of your case, the party who asked for summary judgment is entitled to judgment as a matter
7 of law, which will end your case. When a party you are suing makes a motion for summary
8 judgment that is properly supported by declarations (or other sworn testimony), you cannot
9 simply rely on what your complaint says. Instead, you must set out specific facts in
10 declarations, depositions, answers to interrogatories, or authenticated documents, as provided
11 in Rule 56(e), that contradict the facts shown in the defendants' declarations and documents
12 and show that there is a genuine issue of material fact for trial. If you do not submit your
13 own evidence in opposition, summary judgment, if appropriate, may be entered against you.
14 If summary judgment is granted in favor of defendants, your case will be dismissed and there
15 will be no trial. *See Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir. 1998) (en banc). Plaintiff
16 is advised to read Rule 56 of the Federal Rules of Civil Procedure and *Celotex Corp. v.*
17 *Catrett*, 477 U.S. 317 (1986) (holding party opposing summary judgment must come forward
18 with evidence showing triable issues of material fact on every essential element of his claim).
19 Plaintiff is cautioned that failure to file an opposition to defendants' motion for summary
20 judgment may be deemed to be a consent by plaintiff to the granting of the motion, and
21 granting of judgment against plaintiff without a trial. *See Ghazali v. Moran*, 46 F.3d 52,
22 53-54 (9th Cir. 1995) (per curiam); *Brydges v. Lewis*, 18 F.3d 651, 653 (9th Cir. 1994).

23 5. Defendants shall file a reply brief no later than fifteen (15) days after plaintiff's
24 opposition is filed.

25 6. The motion shall be deemed submitted as of the date the reply brief is due. No
26 hearing will be held on the motion unless the Court so orders at a later date.

27 7. All communications by the plaintiff with the Court must be served on
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1 defendants, or defendants' counsel once counsel has been designated, by mailing a true copy
2 of the document to defendants or defendants' counsel.

3 8. Discovery may be taken in accordance with the Federal Rules of Civil
4 Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local
5 Rule 16-1 is required before the parties may conduct discovery.

6 9. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the
7 court informed of any change of address and must comply with the court's orders in a timely
8 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute
9 pursuant to Federal Rule of Civil Procedure 41(b).

10 10. Extensions of time must be filed no later than the deadline sought to be
11 extended and must be accompanied by a showing of good cause.

12 11. Plaintiff's claims against Wikoff are DISMISSED without prejudice.

13 **IT IS SO ORDERED.**

14 DATED: May 24, 2010


RICHARD SEEBORG
United States District Judge

United States District Court
For the Northern District of California